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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

ERNESTO S. FLORESCA,
Plaintiff and Appellant,

v.

JAMES A. MCELROY,
Defendant and Respondent.

A150324

(San Francisco County
Super. Ct. No. CGC15543489)

DISCUSSION

Plaintiff Ernesto Floresca pled guilty in federal district court to nine counts of federal wire and mail fraud in connection with a mortgage fraud investigation by federal law enforcement authorities. At the sentencing hearing, which he personally attended, the federal district court sentenced him to three months in prison, followed by two years of supervised release including three months on home detention. He then sued his criminal defense attorney, respondent James McElroy, seeking more than \$100,000 in damages for legal malpractice in connection with his sentence. He contended his attorney had been negligent by failing initially to notice that the prosecutor had recommended the three-month prison term and then failing to contest that recommendation at the sentencing hearing.

According to the trial court's statement of decision, defense attorney McElroy admitted at trial that he misread the prosecutor's written sentencing recommendation before the hearing (neglecting to realize it included a prison term) and also admitted he sent a premature email to plaintiff communicating that mistaken understanding, but

testified that he realized his mistake at the sentencing hearing and told the court plaintiff agreed with the recommended prison term (apparently, without consulting plaintiff), because McElroy was concerned for many reasons the judge would follow the probation department's recommendation for far more prison time (12–15 months).¹ And the plaintiff received the lightest sentence of all defendants.

After a one-day bench trial, the trial court rejected plaintiff's malpractice claims on multiple grounds in a nine-page statement of decision and directed the entry of judgment in favor of McElroy.

Plaintiff now timely appeals, arguing the trial court abused its discretion in three respects. One, by admitting into evidence four documents he contends were not properly authenticated and were inadmissible attorney work product. Two, by making erroneous factual findings. And three, by basing its decision in part on his credibility as a witness which he argues the court was not permitted to do.² There also is a fourth argument, captioned "the trial court is so biased and unresponsive" which is unintelligible.

No respondent's brief has been filed.

We affirm the judgment for several reasons.

First, the appellate record is too sparse for us to review these issues. It does not contain a reporter's transcript of the trial which is critical, and the clerk's transcript contains only limited materials. As far as we can tell, the record does not even contain copies of the exhibits plaintiff challenges as improperly admitted. "[A] party challenging a judgment has the burden of showing reversible error by an adequate record." (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.) Where, as here, the appellant attacks rulings made

¹ Among them, according to the statement of decision, McElroy testified this was one of the largest mortgage fraud conspiracies at the time, the financial institutions involved had suffered more than \$5 million in losses (exposing each of the co-defendants to about \$500,000 in court-ordered restitution), the evidence against plaintiff was overwhelming, and plaintiff himself had prepared false financial documents for more than 50 borrowers.

² This argument presumably relates to the trial court's determination in its statement of decision that "it was not credible that [plaintiff] 'did not remember' much of the facts of his case."

at trial, the appellant must provide a record of what actually transpired at trial (in the form of either a reporter's transcript or a settled statement) in order for us to consider the appellant's claims of error, so that we may review not just the challenged rulings but also their context. (See *id.* at pp. 574–575.)

Second, the arguments are forfeited because plaintiff hasn't provided any reasoned legal argument or legal authority in support of them. “ ‘Appellate briefs must provide argument and legal authority for the positions taken.’ [Citation.] ‘When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived.’ [Citation.] If an argument in an appellate brief is supported by only an opinion or argument . . . without ‘citation to any recognized legal authority,’ that argument may be deemed waived for failure to present supporting substantive legal analysis.” (*In re A.C.* (2017) 13 Cal.App.5th 661, 672.)

Finally, on review of a trial court decision, we may not reweigh the evidence, or second-guess the trial court's credibility determinations. “ ‘ ‘ ‘Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends.’ ” ” ” (*Bloxham v. Saldinger* (2014) 228 Cal.App.4th 729, 750.) Plaintiff's arguments about the trial court's credibility determination and weighing of the evidence fail to demonstrate error that is cognizable on appeal.

DISPOSITION

The judgment is affirmed. Respondent shall recover his appellate costs, if any.

STEWART, J.

We concur.

KLINE, P.J.

MILLER, J.

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